

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

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| JAMAL SUNDIATA SCOTT, | : | CIVIL NO. 1:05-CV-01574 |
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| Plaintiff | : | (Judge Kane) |
| | : | |
| v. | : | (Magistrate Judge Smyser) |
| | : | |
| DONALD VAUGHN, JEFFREY BEARD, | : | |
| JAMES L. GRACE, W.E. CUMMINS, | : | |
| and DAVID DIGUGLIELMO, | : | |
| | : | |
| Defendants | : | |

ORDER

On August 13, 2004, the plaintiff, a prisoner proceeding *pro se*, commenced this 42 U.S.C. § 1983 action in the United States District Court for the Eastern District of Pennsylvania. By an Order dated September 29, 2004 Judge Padova ordered that the case be transferred pursuant to 28 U.S.C. § 1404(a) to this court. Although the order transferring the case to this court was entered on September 29, 2004, the Clerk of Court of the United States District Court for the Eastern District of Pennsylvania did not actually transfer the case file to this court until August of 2005. The Clerk of this court received the file on August 5, 2005.

While this case was in the Eastern District, Judge Padova granted the plaintiff's application to proceed *in forma pauperis*. Judge Padova also denied a motion to dismiss the complaint pursuant to Fed.R.Civ.P. 12(b)(6) filed by defendants Beard, Diguglielmo and Vaughn, denied a motion to dismiss the complaint pursuant to Fed.R.Civ.P. 12(b)(3) and Fed.R.Civ.P. 12(b)(6) filed by defendants Grace and Cummins, and granted a motion to transfer the case to this court filed by defendants Grace and Cummins.

On September 23, 2004, the plaintiff filed a document entitled "Plaintiff Jamal Scott's Motion to Dismiss Defendants Grace, Cummins, Beard's, Vaughn and Diglugliemo's Motion to Dismiss and Defendant's Grace and Cummins Alternative Motion to Transfer the Case." Although titled as a motion, it appears that this document is really a brief in opposition to the motions that were filed by the defendants. Nevertheless, the document was docketed as a motion in the Eastern District. Treating the document as a motion, we will deny the motion as moot given that Judge Padova has ruled on the motions filed by the defendants.

On September 27, 2004, the plaintiff filed a motion to amend his complaint to add another defendant. Pursuant

to Rule 7.5 of the Rules of Court for the Middle District of Pennsylvania, a party filing a pretrial motion must, with limited exceptions not applicable in this instance, file a brief in support of his or her motion within ten days of the filing of the motion. The plaintiff has not filed a brief in support of his motion to amend his complaint. Accordingly, the motion will be deemed withdrawn.

Although the plaintiff's motion to amend is deemed withdrawn, we note that pursuant to Fed.R.Civ.P. 15(a), a plaintiff may amend his complaint once as a matter of course, meaning without seeking leave of court, at any time before the defendants file a responsive pleading (e.g. an answer to the complaint or a motion for summary judgment). Since the defendants have not yet filed an answer to the complaint or a motion for summary judgment, the plaintiff may file an amended complaint without first seeking leave of court. Any amended complaint filed by the plaintiff shall be complete in all respects and shall be a new pleading which stands by itself as an adequate complaint without reference to the complaint already filed.

On September 16, 2004, the plaintiff filed a proposed order entitled "Order to Show Cause for a Injunction and a Temporary Restraining Order." The plaintiff also filed a memorandum and exhibits with the proposed order. We will construe the documents filed by the plaintiff on September 16, 2004 as a motion for a preliminary injunction or temporary restraining order and a brief in support of that motion. We will order the defendants to file, on or before August 26, 2005, a brief in opposition to the plaintiff's motion.

IT IS ORDERED that the plaintiff's motion (doc. 9 from the E.D. of PA) to dismiss the motions filed by the defendants is **DENIED AS MOOT** and that the plaintiff's motion (doc. 10 from the E.D. of PA) to amend his complaint is **DEEMED WITHDRAWN**. **IT IS FURTHER ORDERED** that, on or before August 26, 2005, the defendants shall file a brief in opposition to the plaintiff's motion (doc. 8 from the E.D. of PA) for a preliminary injunction or temporary

restraining order. **IT IS FURTHER ORDERED** that the Clerk of Court is directed to send to the plaintiff a copy of the Court's Standing Practice Order issued in *pro se* cases.

/s/ J. Andrew Smyser
J. Andrew Smyser
Magistrate Judge

Dated: August 11, 2005.